



booklet entitled *Pest Control in the School Environment: Adopting Integrated Pest Management*, which provides an introduction to IPM as it might be adopted for the school environment, including both structural and landscape areas. Tim Tidwell of DPR's Environmental Monitoring and Pest Management Branch reported on a survey of school districts which DPR recently completed to ascertain what types of pest management practices are being used in the schools; the goals of the survey were to obtain an overview of current IPM practices in the school districts, determine what obstacles prevent school districts from implementing IPM practices, and develop strategies to promote and encourage IPM. Tidwell reported that DPR sent surveys to over 1,000 school districts; 55% of the districts responded. Staff is currently reviewing those responses, and expects to complete a final report in the fall.

■ FUTURE MEETINGS

DPR's PAC, PREC, and PMAC meet regularly to discuss issues of practice and policy with other public agencies; the committees meet at 1020 N Street in Sacramento.

WATER RESOURCES CONTROL BOARD

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The state Water Resources Control Board (WRCB) is established in Water Code section 174 *et seq.* The Board administers the Porter-Cologne Water Quality Control Act, Water Code section 13000 *et seq.*, and Division 2 of the Water Code, with respect to the allocation of rights to surface waters. The Board, located within the California Environmental Protection Agency (Cal-EPA), consists of five full-time members appointed for four-year terms. The statutory appointment categories for the five positions ensure that the Board collectively has experience in fields which include water quality and rights, civil and sanitary engineering, agricultural irrigation, and law.

Board activity in California operates at regional and state levels. The state is divided into nine regions, each with a regional water quality control board (RWQCB or "regional board") composed of nine members appointed for four-year terms. Each regional board adopts Water Quality Control Plans (Basin Plans) for its area and performs any other function concern-

ing the water resources of its respective region. Most regional board action is subject to State Board review or approval.

The State Board has quasi-legislative powers to adopt, amend, and repeal administrative regulations for itself and the regional boards. WRCB's regulations are codified in Divisions 3 and 4, Title 23 of the California Code of Regulations (CCR). Water quality regulatory activity also includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board and its staff of approximately 450 provide technical assistance ranging from agricultural pollution control and waste water reclamation to discharge impacts on the marine environment. Construction loans from state and federal sources are allocated for projects such as waste water treatment facilities.

WRCB also administers California's water rights laws through licensing appropriate rights and adjudicating disputed rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water, and violations of license terms.

On July 1, the state Senate confirmed Mary Jane Forster's appointment as a WRCB member; Forster previously served for ten years on the San Diego Regional Water Quality Control Board.

■ MAJOR PROJECTS

WRCB, EPA Enter Into a "Framework Agreement" on Bay/Delta Protection. On June 20, WRCB and the U.S. Environmental Protection Agency (EPA) signed a 13-page framework agreement calling for the development of Bay/Delta protections acceptable to both the state and federal governments. The agreement emphasizes the following three areas where federal-state cooperation with respect to the Bay/Delta Estuary is crucial: (1) the formulation of water quality standards; (2) coordination of federal and state project operations with regulatory requirements, including the federal Central Valley Project (CVP) and the State Water Project (SWP); and (3) joint development of long-term solutions to the water quality and declining fish population problems in the Bay/Delta, because "neither the federal nor the state government, acting alone, can accomplish this task."

The agreement is a welcome step in a long-running battle between Governor Wilson and EPA. Since 1987, WRCB has been engaged in a marathon proceeding to adopt adequate water quality standards for the San Francisco/Sacramento-San Joaquin Delta Estuary, but Wilson abruptly halted the proceeding in April 1993 after

the U.S. Fish and Wildlife Service (USFWS) listed the Delta smelt as threatened under the federal Endangered Species Act, thus requiring all government agencies and private parties to consult with USFWS before taking any action which might affect the species' survival. [13:2&3 CRLR 177] With no state or federal standards in place, several environmental groups sued EPA to compel it to draft federal standards for the Bay/Delta; to settle the lawsuit, EPA agreed to and did propose water quality standards in December 1993 which protect declining wildlife in the Bay/Delta by increasing the amount of fresh water retained in the Delta, thus decreasing the amount available to farms and cities. [14:1 CRLR 135; 13:4 CRLR 163] Governor Wilson criticized EPA's standards, claiming that the proposal is too costly in terms of both water and jobs for the state, and characterizing the problem as a "water supply and facilities operations problem the solution to which Congress has reserved to the states" and over which EPA lacks jurisdiction under the federal Clean Water Act (CWA). The state and federal governments finally came to a truce in March 1994: WRCB agreed to develop a permanent water quality control plan for the Bay/Delta by December 15, and EPA agreed to hold off on imposing its standards until that date, to give WRCB one last chance to come up with adequate standards. [14:2&3 CRLR 173-74]

Specifically, the June 20 agreement sets forth the following program for establishing water quality standards for the Bay/Delta Estuary:

- EPA has already received public comment on its draft water quality standards for the Bay/Delta and will take final action on the standards by December 15. However, upon its approval of WRCB-submitted standards which meet EPA requirements on estuarine habitat and other fish and wildlife uses of the Bay/Delta Estuary, EPA will initiate the necessary rulemaking action consistent with the CWA to withdraw the federal standards.

- Gathering public input from workshops which began in April and—at this writing—are expected to continue through October, WRCB will update and revise its water quality control plan for the Bay/Delta to meet CWA requirements. The workshops will solicit comments and recommendations from interested parties on the level of protection which should be provided and on available alternatives which afford that level of protection.

- WRCB will incorporate the results of this process into a draft water quality control plan, which will be released by De-



ember 15. A hearing will be held approximately sixty days after the release of the draft plan to solicit comments; WRCB will then consider adoption of the draft plan by March 1995, and submit it to the Office of Administrative Law (OAL) for approval. The new or revised water quality standards will be submitted to EPA for review and approval.

- WRCB will then initiate a water rights proceeding for the purpose of allocating responsibility among the water rights holders in the Bay/Delta watershed for complying with the new standards, and to establish terms and conditions in appropriate water rights permits.

Under the "framework agreement," state and federal officials have committed to an evaluation of alternative solutions to address problems affecting the Bay/Delta Estuary's public values, including water quality; to guarantee protection of the Bay/Delta Estuary and its fish and wildlife resources; to effectively plan and operate water export systems; and to maintain Delta levees and channels. They also agreed to establish a central role in the process for the public, and to create a committee of citizen advisors representing California's agricultural, environmental, urban, and other affected interests to advise the responsible agencies. They have committed to a coordinated evaluation of Bay/Delta standards within the framework of the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA) to ensure that all reasonable alternatives will be considered and that the study of such alternatives will occur in an open forum; and to develop such details as are necessary to commence joint management of the long-term solution-finding process. In the interim, the federal agencies agreed to cooperate, as appropriate, with the state's long-term solution-finding process.

The accord also listed points of agreement regarding endangered species and water quality and set up the following plan to address those issues:

- A coordination group will be established consisting of representatives of EPA, WRCB, USFWS, the state Department of Water Resources, the U.S. Bureau of Reclamation, and the National Marine Fisheries Service; this group will exchange information and facilitate the coordination of water project operations regarding the winter-run salmon and the Delta smelt and state and federal water quality standards.

- The group may address such issues as fish identification and distribution and population levels; status of endangered species take; coordination of winter-run

salmon and Delta smelt management programs; strategies for implementation of Bay/Delta estuary standards; and factors affecting Delta habitat and the health of fisheries.

In the meantime, however, and despite the framework agreement, EPA is moving forward with the finalization of its water quality standards in case state-promulgated standards fail to meet federal requirements. EPA originally published the proposed water quality standards and rules for endangered and threatened wildlife species in January 1994. The formal public comment period resulted in a number of alternatives to the proposed rules, which EPA is currently considering. Among the proposed changes are the following:

- Regarding the revision of estuarine habitat criteria, EPA is proposing criteria that replicate the level of development existing in 1968. The intent is to protect the estuarine habitat and related fish and wildlife uses to the same degree that uses would have been protected under the level of development present in 1968; EPA chose the 1968 level because of a widespread perception that there was adequate estuarine habitat to sustain most aquatic populations in the Bay/Delta at that time.

- The rules contain an alternative approach to the salmon smolt survival index which draws on discussions at a series of workshops sponsored by the California Urban Water Agencies (CUWA) and a number of environmental groups. There are three principal differences between the rules proposed in December 1993 and the new alternative. First, under the revised alternative, direct experimental measurements of survival throughout the Delta will be used to estimate attainment of the criteria instead of relying on modeled estimates; this approach ensures that any biological factors not included in the model will be reflected in the survival measures, ensuring the intended protection. Second, the alternative method provides for a more precise approximation of hydrological conditions. Finally, EPA is proposing an alternative method for developing target values for the salmon smolt survival which is more statistically reliable.

Other Bay/Delta Activities. On September 1, California Urban Water Agencies (CUWA), consisting of the state's eleven largest urban water agencies, presented WRCB with its own set of proposals for restoring the ecosystem of Bay/Delta. The plan uses EPA-proposed standards as a baseline and recommended changes that CUWA claimed would "provide as effective or more effective environmental protection at a lower water supply and eco-

nomic cost" and improve water supply reliability.

CUWA's proposal, known as the Comprehensive Protection Program (CPP), includes recommendations for the following: multi-species habitat protection; water quality standards; measures to address non-water factors affecting the Bay/Delta system; and potential legislative reforms. The recommendations include changes to EPA's standards for baseline assumptions about existing water shortages, and water transfer capability, and explores issues related to the availability and cost of alternative water supplies, the short- and long-term effects of shortages caused by the standards, and other impacts on the urban and agricultural sectors.

The CPP calls for exemption from compliance with salinity standards when weather or tidal patterns "prevent the attainment of salinity standards, despite the best efforts of the water operators." The plan also suggests implementation measures which include a mitigation credits program, a water supply impact cap, and an Environmental Restoration Fund for the state to obtain additional water for environmental purposes through a bond issuance or a fee on water users.

Also, nearly a month after the framework agreement between the state and federal agencies was announced, a coalition of business leaders sent a letter to President Clinton and Governor Wilson, urging them to support water quality standards that would end the dispute over the Bay/Delta region and allow water sales that could help meet urban needs. The letter, signed by the chief executive officers of BankAmerica, Wells Fargo Bank, the Bay Area Economic Forum, TransAmerican Corporation, and Southern California Edison, among others, applauded the framework agreement and reminded the leaders that the excessively prolonged uncertainty over the state's main water supply is threatening California's economy; according to the business coalition, "the lack of approved standards is creating uncertainty that threatens the economic recovery we so desperately need."

The letter urged that a longer-range, comprehensive, multi-species plan be adopted to protect Bay/Delta habitats and avoid the conflicts arising from a species-by-species regulatory approach. As many of the signatories supported the passage of water transfer legislation, the letter also called for an expanded water market, stating that "an expanded water market—supported by state and federal law and developed by private initiative—would benefit all Californians."

Mono Lake Update. In February, the Board completed the evidentiary hearings



which it held to receive comments and recommendations to assist it in developing amendments to the water rights licenses held by the City of Los Angeles to divert water from the Mono Lake Basin. Pursuant to a court order, WRCB was required to complete its review of Los Angeles' water rights licenses by September 1. [14:2&3 CRLR 174; 14:1 CRLR 136; 13:4 CRLR 164]

In mid-September, WRCB staff released a proposed decision which adopts a resolution certifying the final environmental impact report (EIR) for the amendment of Los Angeles' water rights licenses, and amends the City's water rights licenses to establish fishery protection flows in streams tributary to Mono Lake and protect public trust resources at Mono Lake and in the Mono Basin. Among other things, the proposed decision acknowledges that while Los Angeles' export of water from Mono Basin has provided a large amount of high quality water for municipal uses, it has also "caused extensive environmental damage."

Based on an examination of the public trust resources of the Mono Basin, consideration of the flows needed for protection of fish, and consideration of the impacts of its decision on the water available for municipal use and power production, the proposed decision concludes that the water rights licenses of Los Angeles should be amended to establish minimum instream flows for protection of fish in the streams from which Los Angeles Department of Water and Power diverts water, as well as periodic higher flows for channel maintenance and flushing purposes. WRCB's proposed decision would also include specified water diversion criteria which are intended to gradually restore the average water elevation of Mono Lake to approximately 6,392 feet above mean sea level in order to protect public trust resources at Mono Lake. Among other things, the increased water level will protect nesting habitat for California gulls and other migratory birds, maintain the long-term productivity of Mono Lake brine shrimp and brine fly populations, maintain public accessibility to the most widely visited tufa sites in the Mono Lake Tufa State Reserve, enhance the scenic aspects of the Mono Basin, lead to compliance with water quality standards, and reduce blowing dust in order to comply with federal air quality standards.

According to WRCB, its proposed water diversion criteria would significantly reduce the quantity of water which Los Angeles can divert from the Mono Basin as compared to pre-1989 conditions; however, WRCB notes that there are other sources of water avail-

able to Los Angeles and the amendments to the water rights licenses are feasible.

The proposed decision would also require specified actions aimed at expediting the recovery of resources which were degraded due to the many years of little or no flow in the diverted streams. Among other things, WRCB's proposed decision would require Los Angeles to consult with the Department of Fish and Game (DFG) and other designated parties, and to develop plans for stream and waterfowl habitat restoration. The specific restoration work that will be required will be determined following WRCB's review of the restoration plans.

At this writing, WRCB is expected to consider adoption of the resolution, decision, and order on September 28, the ten-year anniversary of the enactment of legislation designating Mono Lake as a scenic area.

WRCB Releases Final External Program Review Report. In July 1993, Governor Wilson asked WRCB to undertake an external programmatic review of its own mandates and programs and those of the nine RWQCBs, in order to identify how the boards can best meet their mandates to protect California's water resources while removing unnecessary red tape. [13:4 CRLR 165] WRCB assigned a separate task force to investigate each of four major programmatic areas—regional board consistency, groundwater protection, permit reform, and water resources. In addition to these specialized panels, the Board formed a comprehensive Program Review Committee, which included the chair and vice-chair of each of the four task forces, as well as selected members of the legislature. The Program Review Committee was responsible for the timely development and submittal to the Governor of the individual task force reports, as well as identifying major areas of concern and overlapping issues. [14:1 CRLR 137] In mid-May, WRCB released a draft of the external program review report for comment, and held public forums in San Francisco and San Diego in order to receive public feedback on the report. [14:2&3 CRLR 175]

On June 17, the External Review Committee released its final report to the Governor and the legislature. Among other things, the final report includes the following recommendations:

• **Regional Board Consistency.** The report recommended that the state develop a centralized process to lend consistency to the bases for state and regional water board decisions; a RWQCB should be required to demonstrate local water quality needs before departing from established

WRCB policies or plans; each RWQCB should appoint an ombudsperson to provide information and guidance to the public and the regulated community; and WRCB should develop guidance documents to assist in resolving inconsistencies between state and federal law on water quality standardsetting.

The report also recommended that a statewide enforcement policy should be adopted in order to ensure that RWQCB enforcement actions are consistent, predictable, and fair; while facts in each case will differ, comparable violations should draw similar consequences. Also, WRCB should monitor RWQCB enforcement actions for appropriateness and consistency and review on its own motion actions that are found to be inappropriate or inconsistent; and strict liability should be applied to discharges to groundwater under some circumstances, and a committee should be formed to determine when exceptions to this rule are appropriate.

• **Groundwater Protection.** The report recommended that in order to achieve the appropriate balance of protecting public health, beneficial uses of water, and the environment while promoting prompt, cost-effective groundwater cleanups, WRCB should implement its Resolution No. 68-16 and Resolution No. 92-49 (see below), and apply Chapters 15 and 16, Title 23 of the CCR (dealing with discharges of waste to land and underground tank regulations, respectively) to the remediation and maintenance of contaminated sites. Also, the state should remove liability for a landowner or siteowner who was not responsible and had no knowledge of contamination caused by a third party; WRCB should establish a task force to develop legislative proposals that address the equitable problems of landowner liability; WRCB should continue its efforts to insulate lenders from liability; and WRCB, after consulting with local jurisdictions, should adopt a Comprehensive Groundwater Protection Policy and Implementation Plan. In conjunction with Plan, and with the assistance of the various RWQCBs, WRCB should develop a program to identify, quantify, and prioritize sources which constitute threats to groundwater quality that have previously received inadequate attention. Also consistent with the mandates of SB 1082 (Calderson) (Chapter 418, Statutes of 1993), Cal-EPA should establish a public task force to eliminate all duplication and overlap between state and regional water boards; prior to establishing such a task force, an interagency task force should be assigned to research and identify specific areas of regulatory overlap.



• **Permit Reform.** The report recommended that RWQCBs develop and implement a comprehensive electronic permitting, monitoring, and enforcement tracking system; RWQCBs should jointly develop a handbook specifying the process for obtaining a permit and complying with requirements, and provide a specially-trained staff person to assist applicants in the more complex aspects of the permit process; state and regional water boards should develop a data management "Technology Strategic Plan" to help resolve permit issuance problems; RWQCB should give priority to issuing new National Pollutant Discharge Elimination System (NPDES) permits over reissuance of expired ones and seek amendments to the federal CWA to require that permits be reviewed, rather than renewed, every five years; and WRCB should explore the development of a comprehensive watershed management program to protect water quality in a cost-effective manner without duplicating existing programs.

• **Water Resources.** The report recommended that the state amend current basin plans to incorporate a watershed management approach including establishment of site-specific water quality objectives for toxic pollutants in order to protect beneficial uses within each watershed; and WRCB should establish a council composed of scientists and regulators to define the boundaries of the regions of the coastal waters of California.

Finally, the External Review Committee recommended that it be reconvened on a periodic basis in order to track and facilitate implementation of the recommendations made by the Task Forces and the Committee.

WRCB and CIWMB Develop Joint Implementation Work Plan. WRCB and the California Integrated Waste Management Board (CIWMB) recently approved a Joint Implementation Work Plan, as required by AB 1220 (Eastin) (Chapter 656, Statutes of 1993), which created the Solid Waste Disposal Regulatory Reform Act of 1993. [13:4 CRLR 166-67; 13:2&3 CRLR 178] AB 1220 requires WRCB and CIWMB to (1) remove the overlap, duplication, and conflict among the state agencies and boards which regulate solid waste in the areas of enforcement, permits, closure/postclosure maintenance, and financial assurances; (2) develop a streamlined permitting process; (3) provide a clear division between the duties of CIWMB staff and the staff of the local enforcement agencies (LEAs) which are responsible for enforcing the terms of solid waste facilities permits; (4) assess the feasibility of combining financial assurances mechanisms for

operating liability and corrective action; and (5) consolidate all solid waste disposal facility regulations into one area within the CCR. The Joint Implementation Work Plan seeks to achieve AB 1220's goals by the required date of December 31, 1995, by setting goals for the two boards to undertake and accomplish.

In order to remove overlap, duplication, and conflict among the state agencies and boards which regulate solid waste in the areas of enforcement, permits, closure/postclosure maintenance, and financial assurances, WRCB and CIWMB will review numerous sections of the Public Resources Code regarding standards, closure and postclosure maintenance plans, enforcement action, corrective action, and financial assurance mechanisms to determine those provisions which overlap or conflict; develop interim guidance for LEA and RWQCB staff to begin to eliminate the duplication of effort; and develop proposals to provide that both WRCB and CIWMB have access to funds for closure and postclosure maintenance. The boards must also develop mechanisms, such as MOUs and memoranda of agreement (MOA), to ensure coordination between the two agencies.

In order to streamline the permitting process, CIWMB, its LEAs, WRCB, and its RWQCBs must combine all applications for solid waste facility permits into one document under Public Resources Code section 43101. The boards must also revise the report and review requirements so that one report will satisfy CIWMB, WRCB, LEA, and RWQCB permit review procedures.

In order to provide a clear division between the duties of CIWMB staff and LEA staff, CIWMB and the LEAs must develop an ongoing training program to ensure adequacy of performance in LEA duties. CIWMB and the LEAs must also establish review procedures to enable CIWMB to conduct LEA performance reviews every eighteen months; conduct inspections of landfills every eighteen months; and require CIWMB to take specific action if an LEA is not fulfilling its responsibilities. Furthermore, CIWMB and the LEAs must review specific sections of the Public Resources Code to determine any duplication and overlap between the two entities. CIWMB has begun to carry out these goals through proposed rulemaking (see agency report on CIWMB for related discussion).

In order to assess the feasibility of combining financial assurances mechanisms for operating liability and corrective action, CIWMB and WRCB will prepare a "Course of Action" work plan to assess which financial assurance mechanisms for operating liability and correc-

tive action can be combined. After determining whether combining financial mechanisms is feasible, both boards would revise their regulations as appropriate.

In order to consolidate all solid waste disposal facility regulations into one area within the CCR, CIWMB and WRCB will seek to develop a format for consolidation, and develop draft regulatory language in five areas: permitting; standards; closure/postclosure maintenance; financial assurances; and LEA grants, certifications, and decertifications.

The boards will also seek to implement programs relevant to the furtherance of AB 1220's goals. Among these programs, CIWMB and WRCB will award Household Hazardous Waste grants to local governments; fund source reduction, public education, and market development programs; and implement pilot programs for encouraging state agencies to purchase recycled products.

WRCB Remands Site-Specific Water Quality Objectives for the San Francisco Bay Basin. A July 8 final decision in a lawsuit filed by several northern California cities against WRCB (see LITIGATION) brought to an end a two-year process by which the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) was attempting to amend its Bay Basin plan to include a site-specific water quality objective for copper for San Francisco Bay. The amendments, first adopted by SFBRWQCB in October 1992, proposed to protect salt water aquatic life by specifying copper effluent limits and establishing preliminary goal for reductions in mass emissions of copper from riverine, storm water, and municipal and industrial sources. [14:1 CRLR 138] Because the final judgment invalidated WRCB's 1991 Water Quality Control Plan for Enclosed Bays and Estuaries of California, EPA will adopt new water quality standards; basin plans in effect prior to the adoption of the statewide plan will be reinstated until those standards are adopted. As a result, WRCB remanded the amendments on June 16 for reconsideration by SFBRWQCB under the interim guidelines.

Board Accepts Clean Water Act Grants to Fund Regional Wetlands Programs. At its July 21 meeting, the Board unanimously adopted a resolution authorizing acceptance of a \$368,080 grant from EPA to fund two regional wetlands programs. According to the Board, the grant helps to meet a goal announced by the Wilson administration in August 1993 of working toward a long-term increase in the quantity and quality of the state's wetlands, primarily through regional wetlands protection programs. [13:4 CRLR 172]



The 1994 EPA wetlands protection grant will fund programs initiated by the San Francisco Bay and Lahontan RWQCBs. SFBWRWQCB is researching a program for implementing a more streamlined state regulatory/permitting program that would substitute for the federal Clean Water Act section 404 Dredge/Fill Permit Program in the Bay Area. The regional board has criticized the current framework for administering section 404 wetlands regulations as inefficient and haphazard with respect to permit issuance and wetland protection. The project is designed to enhance permitting efficiency while promoting wetland conservation goals by taking some permitting authority out of the hands of the U.S. Army Corps of Engineers and giving it to the regional board. The program will provide a basis for evaluating the effectiveness of uniting section 404 permitting activities with section 401 certification activities within one state agency.

The grant will also fund a Lahontan regional board plan to develop specific policies which attempt to avoid or mitigate the impacts of future development in the Long Valley and June Lake areas. The project includes detailed wetlands mapping which will establish baseline information and conditions against which the impacts of future development can be measured.

WRCB Proposes Amendments to Underground Storage Tank Cleanup Fund Program. On June 10, WRCB published notice of its intent to amend numerous provisions in Chapter 18, Division 3, Title 23 of the CCR, regarding its Underground Storage Tank Cleanup Fund Program. Chapter 6.75 of the Health and Safety Code, enacted by the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, establishes requirements for the demonstration of financial responsibility by owners and operators of petroleum underground storage tanks and the requirements of the Underground Storage Tank Cleanup Fund; the Fund reimburses UST owners and operators for the cleanup of contaminated soil and water caused by leaking petroleum USTs. As enacted in 1989, the law established a four-tiered priority system with which WRCB must comply in paying claims from the Fund, and required WRCB to update the cleanup site priority list at least twice annually. In 1991, WRCB adopted emergency regulations to implement Chapter 6.75. [12:1 CRLR 155]

WRCB's proposed amendments to its UST regulations would conform them to legislative changes made by AB 1061 (Costa) (Chapter 432, Statutes of 1993), which revises the priority ranking system

and the Fund payout practices of the Board, and permits the Board to update the cleanup site priority list annually, instead of twice annually. Among other things, proposed new section 2812.6 would allow the Board to disqualify a claim for funds for specified reasons at any time during the active life of the claim; proposed amendments to section 2813.1 would require WRCB to adopt a priority ranking list annually instead of twice a year.

WRCB held a public comment period on its proposed UST regulatory amendments until July 29; however, no comments were received. At this writing, WRCB is scheduled to consider adopting the proposed amendments at its October 20 meeting.

Rulemaking Update. The following is a status update on other WRCB rulemaking proceedings described in detail in previous issues of the *Reporter*.

• **Underground Storage Tank Testers.** On June 6, OAL approved WRCB's proposed changes to Articles 1-8, Chapter 17, Division 3, Title 23 of the CCR, regarding the licensing and regulation of UST testers. Among other things, the amendments require applicants for tank tester licenses to have completed six months of qualifying experience during which at least 50 USTs are tested. [14:2&3 CRLR 176; 14:1 CRLR 138; 13:4 CRLR 166]

• **Policies and Procedures for Investigation, Cleanup, and Abatement of Discharges.** On July 8, OAL approved WRCB's Resolution 92-49, entitled *Policies and Procedures for Investigation, Cleanup and Abatement of Discharges Under Water Code Section 13304*, which—according to WRCB—will make it easier for cleanup directives issued by RWQCBs to qualify as "applicable or relevant and appropriate requirements" for remedial actions at federal Superfund facilities; the policy also provides procedures for all RWQCBs to follow in overseeing investigation, cleanup, and abatement. [14:2&3 CRLR 175; 12:4 CRLR 189-90]

Review of Nonpoint Source Management Program. In February, WRCB began a year-long review of nonpoint source (NPS) pollution in California. Comprised mainly of polluted runoff, NPS pollution originates from a diverse array of sources including agriculture, abandoned mines, and urban development. [14:2&3 CRLR 174]

Since February, nine technical advisory committees (TACs) have met periodically to evaluate the effectiveness of the Board's NPS Pollution Control Program. In addition to reviewing the adequacy of NPS pollution management in California, the TACs will recommend strategies for

preventing NPS pollution from each particular land use through the implementation of management measures, and identification of processes for selecting the specific practices necessary to implement each strategy. Recent TAC meetings encompassed such areas as confined animals, urban development, irrigated agriculture, and pesticides.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 176-78:

AB 3673 (Hauser). The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 requires any owner or operator of a UST containing petroleum, or other responsible party, to take corrective action in response to an unauthorized release in compliance with specified regulations adopted by WRCB and specified provisions of the Act (*see* MAJOR PROJECTS). As amended June 22, this bill requires WRCB, in adopting those regulations, to develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and other specified factors. This bill was signed by the Governor on September 27 (Chapter 930, Statutes of 1994).

AB 3603 (Sher). Existing law prohibits the ownership or operation of a UST used for the storage of hazardous substances unless a local agency issues a permit for its operation. Existing law also imposes various design and installation requirements with regard to USTs and provides that those design and installation requirements apply to the construction, operation, maintenance, monitoring, and testing of USTs which are required to obtain hazardous waste facilities permits from the Department of Toxic Substances Control (DTSC); DTSC is required to adopt regulations to implement these requirements with regard to the storage of hazardous waste. As amended July 7, this bill would have required DTSC, in conjunction with WRCB, to prepare and submit a report and recommendations to the legislature, on or before July 1, 1995, concerning any statutory or regulatory changes that may be necessary to facilitate a coordinated program for the regulation of USTs used for the storage of hazardous wastes. This bill was vetoed by the Governor on September 17.

AB 1222 (Cortese). Existing law requires the beneficial use of water, including—under specific circumstances—the reservation of water to instream uses to preserve and enhance fish and wildlife



resources. Existing law authorizes WRCB to approve any change associated with a water transfer, as specified, only if the Board finds that the change may be made without unreasonably affecting, among other things, fish, wildlife, or other instream beneficial uses. As amended August 25, this bill would have required WRCB to prepare and maintain a registry of instream flow reservations and dedications to list all instream reservations and dedications; required the Board to establish a procedure to allow any interested party to challenge the Board's determination to make, or fail to make, an entry into the registry and whether an entry accurately reflects the judicial or administrative action or the contract which creates or affects an instream flow dedication or reservation; appropriated \$125,000 from the California Environmental License Plate Fund to WRCB to carry out its duties in connection with the preparation and maintenance of the registry; and required WRCB, in considering whether a diversion, change in point of diversion, place of use, purpose of use or water transfer, lease, or conveyance will unreasonably affect fish, wildlife, or other instream beneficial uses, to consider the instream flow reservations and dedications reflected in the registry. This bill was vetoed by the Governor on September 24.

SB 548 (Hayden). Existing law requires WRCB and the regional boards to develop and maintain a comprehensive program to identify and characterize toxic hot spots in enclosed bays, estuaries, and adjacent waters, to plan for the cleanup of those sites, and to amend water quality plans and policies relating to the sites. As amended August 8, this bill would have required the Director of the Office of Environmental Health Hazard Assessment (OEHHA) to prepare a comprehensive plan for an Aquatic Pollution Health Risk Assessment Program; required WRCB to adjust and increase the total amount of fees collected annually pursuant to a prescribed provision of the Water Code, when the Board next adjusts those fees, in order to fund OEHHA to carry out the Program; and required WRCB, upon appropriation by the legislature, to allocate \$200,000, or an annually adjusted amount, generated from the adjustment in the prescribed fees, to OEHHA to carry out the program. This bill was vetoed by the Governor on September 27.

AB 2014 (Cortese), as amended June 13, authorizes a mutual water company to enter into a joint powers agreement with any public agency for the purpose of jointly exercising any power common to the contracting parties. This bill was

signed by the Governor on July 20 (Chapter 250, Statutes of 1994).

SB 1578 (Thompson). The Sonoma County Flood Control and Water Conservation District Act creates the Sonoma County Flood Control and Water Conservation District and grants specified authority to that District. As amended August 25, this bill grants additional authority to that District relating to the treatment, disposal, or reuse of sewage, wastewater, or storm water, as prescribed, and the provision of sanitation services; allows prescribed sanitation zones to be formed within the District for the purpose of providing specified sanitation services; and grants certain authority to the board of the District with regard to its administration of the sanitation zones. This bill was signed by the Governor on September 28 (Chapter 1089, Statutes of 1994).

The following bills died in committee: **SB 1935 (Marks),** which would have generally required WRCB's meetings to be open and public in accordance with the Bagley-Keene Open Meeting Act and prohibited WRCB from holding a closed meeting relating to the adoption or implementation of water quality standards, plans, or policies; **SB 1933 (Marks),** which would have—among other things—exempted from the rulemaking requirements of the Administrative Procedure Act the issuance, denial, and appeal of specified permits for development in the San Francisco Bay and the Suisun Marsh; **SB 1511 (Kelley),** which would have declared, for purposes of a specified provision of law, that "applicants for waste discharge requirements" and "persons subject to waste discharge requirements" do not include counties or municipalities that are subject to general NPDES permits for storm water discharges associated with industrial activity; **AB 3394 (Sher),** which would have made legislative findings and declarations concerning water quality protection and pollution prevention programs, and the sale, use, and discharge of copper-based root control chemicals, copper-containing cooling water additives, and tributyltin-containing cooling water additives, and authorized WRCB or a regional board to require a person or entity that manufactures or supplies a product that may be discharged to waters of the state to disclose the fraction, by weight, of toxic pollutants contained in the product and make that information available to the public; **AB 2110 (Cortese),** which would have enacted the Bay/Delta Fish and Wildlife Protection Act of 1993, created a Bay/Delta Fish and Wildlife Advisory Committee with prescribed membership, and required the Committee to consult with and advise

specified state agencies with regard to the use of funds derived from the imposition of the mitigation and monitoring fees and also with regard to the implementation of the federal Central Valley Project Improvement Act; **AB 97 (Cortese),** which would have authorized public agencies to transfer, for use outside the agency, water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency; **AB 898 (Costa),** which would have prohibited WRCB or a RWQCB from subjecting the owner or operator of any publicly owned treatment works to certain enforcement actions undertaken pursuant to the Porter-Cologne Water Quality Control Act, if the waste was discharged into the publicly owned treatment works' collection system by a third party acting independently of the owner or operator of the publicly owned treatment works; and **AB 173 (V. Brown),** which would have limited the amount of salary paid to the chair and each member of WRCB.

LITIGATION

In July, final judgment was entered against WRCB in the coordinated actions of *County of Sacramento, et al. v. State Water Resources Control Board*; *City of San Jose v. State Water Resources Control Board*; *City of Sunnyvale v. State Water Resources Control Board*; *Simpson Paper Company v. State Water Resources Control Board*; and *City of Stockton v. State Water Resources Control Board*, in which the petitioner cities challenged WRCB's April 1991 adoption of two statewide water quality control plans which established water quality standards for 68 priority pollutants affecting California's inland surface waters, bays, and estuaries [11:3 CRLR 177-78]; the petitioners contended that these plans were unduly stringent and were not developed in compliance with applicable laws. Sacramento Superior Court Judge Lames Long ruled that the plans are invalid because WRCB failed to comply with the Administrative Procedure Act, the California Environmental Quality Act, and the Porter-Cologne Water Quality Act. The final decision accepted WRCB's contention that it would be impossible to consider environmental characteristics and beneficial uses of each of the state's bodies of water under Porter-Cologne; instead, the decision requires WRCB to consider "on a more general basis information reasonably available to it unless evidence of beneficial uses and environmental characteristics of individual hydrographic units is presented to suggest that certain hydrographic units should be treated differ-



ently." [14:2&3 CRLR 178-79] The judgment directed WRCB to rescind Resolution 91-33, by which the Board had adopted the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan in 1991. In late September, WRCB is expected to rescind Resolution 91-33 in compliance with the court's ruling. Because the ruling invalidated the state's water quality control plans, EPA is in the process of drafting water quality standards for the state. At this writing, EPA plans to publish draft standards in the *Federal Register* in July 1995, with notice of proposed rulemaking to be published prior to that. In the interim, the regional water quality control plans that were in effect before the statewide plans were adopted will be reinstated.

In *Committee to Save the Mokelumne River v. East Bay Municipal Utility, et al.*, 13 F.3d 305 (9th Cir. 1993), defendants East Bay Municipal Utility District (EBMUD) and the Central Valley RWQCB filed a petition for writ of certiorari with the U.S. Supreme Court on July 22; the petition was filed after the U.S. Ninth Circuit Court of Appeals in December 1993 affirmed an order of the U.S. District Court for the Eastern District of California which granted partial summary judgment in favor of the Committee to Save the Mokelumne River. The court found that the defendants own and operate the Penn Mine facility and that acid mine drainage from the abandoned mine site had, from time to time, passed into the Mokelumne River and Camanche Reservoir, conclusively establishing that defendants "discharged a pollutant" from the Penn Mine facility within the meaning of the CWA, making them subject to the Act's permit requirements. [14:2&3 CRLR 179] The mine, located on the banks of the Mokelumne River, was last operated during World War II, and there are no known living owners of the mine. In 1978, the EBMUD and the Central Valley RWQCB undertook a cooperative effort to remediate Penn Mine and stop the flow of acid mine drainage into Camanche Reservoir. In March 1994, EBMUD and the RWQCB jointly applied to WRCB for an NPDES permit in response to the court's decision; at this writing, WRCB is expected to issue a draft NPDES permit in the fall of 1994. According to attorney Craig Wilson of WRCB's Office of Chief Counsel, the Ninth Circuit's decision could have a "chilling effect" on future efforts by regional boards to take action to clean up such facilities, an action Wilson says "they are not required to take as a regulatory body." At this writing, the Supreme Court has not acted on the petition for writ of certiorari.

Committee to Save the Mokelumne River, et al. v. State Water Resources Control Board and Regional Water Quality Control Board, Central Valley Region, was filed in state court in January 1992 on the same facts described above but regarding issues of state law, including whether the RWQCB was acting in its regulatory capacity when it participated in construction and operation of surface impoundments on the Mine Run Dam near the Penn Mine facility; whether Mine Run Dam Reservoir is a point source of pollution subject to an NPDES permit; whether the RWQCB should be held liable as a discharger at Penn Mine; whether RWQCB was authorized to grant EBMUD an exemption from the Toxic Pits Cleanup Act (TPCA); and whether the Committee should be required to exhaust administrative remedies before bringing suit in connection with other impoundments at Penn Mine. The state court case was held in abeyance until the Ninth Circuit Court of Appeals ruled against defendants in the federal proceeding in December 1993. In August, the Committee filed a motion for partial summary judgment asking the state court through collateral estoppel to adopt the federal court's determination; the Committee also asked the court to revoke EBMUD's TPCA exemption (RWQCB had determined that the impoundments were toxic pits subject to the TPCA but granted a clean-up exemption in 1990). The defendants' responses to the motion for partial summary judgment were filed in September; at this writing, a hearing on the motion for partial summary judgment is scheduled for October 14. RWQCB intends to file a motion to dismiss the case on the grounds that plaintiffs failed to exhaust administrative remedies by bringing claims to court that were never raised in the administrative appeal—namely, the claim that RWQCB is a discharger and liable under TPCA (originally, the Committee's only TPCA claim was directed at EBMUD).

In *People of the State of California, Department of Fish and Game and the Regional Water Quality Control Board, Central Coast Region, et al. v. Unocal*, No. CV75194, filed on March 23 in San Luis Obispo County Superior Court, state prosecutors contend that Unocal Corporation engaged in long-term discharges of diluent, a petroleum-based thinner used by Unocal to thin the crude oil still in the ground to facilitate its recovery at the company's Guadalupe Oilfield. [14:2&3 CRLR 179] The maximum allowable fines for the violations cited in the state's civil action exceed \$200 million. At this writing, Unocal is expected to file a demurrer

in October. In a related matter, the California Coastal Commission has issued an emergency coastal development permit requiring Unocal to clean up the diluent-contaminated sand and seepage prior to the 1994-95 winter storm season (see agency report on CCC for related discussion).

In *United States and California v. City of San Diego*, No. 88-101-B (U.S.D.C., S.D., Cal.), the City of San Diego has applied for a congressional waiver from the secondary sewage treatment standards required under the CWA; the City is arguing that the standards are unnecessarily stringent, because they were developed for discharges into lakes and inland waterways, rather than for ocean discharges such as those made by the City. U.S. District Judge Rudi Brewster ruled in April that scientific evidence shows that San Diego's advanced primary form of treatment for sewage discharged into the ocean does not harm marine life, but that he could not exempt the City from the law. Instead, he ordered the City and EPA to develop interim effluent standards and scheduled a January 19, 1995 hearing to evaluate their progress. [14:2&3 CRLR 178] At this writing, the parties to the lawsuit are waiting to see if congressional approval will be granted, giving the City the opportunity to apply for a waiver from the EPA Administrator.

Backcountry Against Dumps v. Water Resources Control Board, et al., No. 952871 (San Francisco Superior Court), and *County of San Diego v. Water Resources Control Board*, No. 665874 (San Diego County Superior Court) were filed in June 1993 to challenge the state's finding that a landfill on the Campo Indian Reservation in San Diego County meets California's environmental standards. [14:2&3 CRLR 179] Both cases are pending while the landfill permitting process is completed by WRCB and CIWMB. If the permits to operate the landfill are granted, the cases will proceed; both cases were filed in the interim in order to meet statute of limitations requirements.

City of San Diego v. California Regional Water Quality Control Board, San Diego Region, and State Water Resources Control Board, No. 00673979, concerns the assessment by the San Diego RWQCB against the City of San Diego for its failure to report sewage spills in a timely or accurate manner; the City is seeking to stay the assessment of civil liability and rescind the RWQCB's assessment order. [14:2&3 CRLR 179-80] This matter is still pending in San Diego County Superior Court.

Citizens for a Better Environment v. Unocal and Citizens for a Better Environment v. Exxon, 861 F.Supp. 889 (N.D.



Cal., July 8, 1994), are identical citizen suits challenging each defendant's discharge of wastewater containing the chemical selenium into portions of the San Francisco Bay. The suit against Unocal concerns its refinery at Rodeo, which discharges selenium-containing wastewater into the San Pablo Bay. The suits were filed in the face of an order by the San Francisco Bay RWQCB, granting the companies a five-year extension of the deadline by which they must come into compliance with the pollution discharge standards contained in their NPDES permits under the Clean Water Act. This extension was granted as part of a settlement in a state court lawsuit filed by the oil companies in 1992 against the RWQCB challenging the listing of these bays as impaired waters and requiring additional regulation of their selenium discharges. The principal terms of the settlement were a five-year extension of the deadline for oil company compliance with the selenium regulations; in exchange, the companies would pay the state \$2 million and drop their state court action. In the instant federal cases, the defendant oil companies filed motions to dismiss, arguing that the enforcement actions taken by the RWQCB preempt citizen lawsuits to enforce the standards. In its July 8 decision, the U.S. District Court for the Northern District of California rejected that argument; the court disagreed that an order by the Board which extends the compliance period can shield a polluter from enforcement of the terms of the permit through a citizen suit. "Such orders constitute agreements by the issuing enforcement authority on how the authority...plans to exercise its prosecutorial discretion," according to the court; it does not preclude citizens from instituting enforcement actions. The court thus denied defendants' motions to dismiss, and further ordered a change of venue to the Eastern District of California for the suit against Exxon.

On June 15, the California Supreme Court denied plaintiffs' petition for review in *Tahoe Keys Property Owners' Association v. State Water Resources Control Board*, 23 Cal. App. 4th 149 (Mar. 30, 1994), leaving intact the Third District Court of Appeal's denial of a preliminary injunction against the further collection of mitigation fees previously collected by WRCB, the Lahontan Regional Water Quality Control Board, and the Resources Agency. Tahoe Keys Property Owners' Association seeks relief from a mitigation fee charged as a condition for obtaining building permits for land around Lake Tahoe. [14:2&3 CRLR 179] The case is now expected to proceed on substantive issues.

RECENT MEETINGS

At its May 18 meeting, the Board approved a \$15,000 grant from the State Water Pollution Cleanup and Abatement Account to assist in funding a demonstration project on the feasibility of retrofitting septic tanks in Chico Urban Area with recirculating trickling filters for nitrogen removal as an alternative to abandoning existing septic systems; a \$2.3 million loan to the Goleta Sanitary District in Santa Barbara County for a corrosion protection system and installation of an armor rock protection for the District's ocean outfall; a \$30 million loan to the City of Santa Cruz to upgrade the City's treatment plant to full secondary treatment and to make other necessary improvements to comply with waste discharge requirements; and a \$9.8 million loan to the City of Oceanside to upgrade and improve the performance of the City's San Luis Rey Wastewater Treatment Plant.

At its July 6 meeting, the Board approved a memorandum of understanding (MOU) between WRCB and DFG's Office of Oil Spill Prevention and Response (OSPR) regarding discharges associated with oil spill response activities. The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, enacted in 1990, charges OSPR with primary responsibility for directing oil spill response activities in marine waters [10:4 CRLR 155]; the Act was amended in 1994 to ensure that such "response" discharges would not require an NPDES permit and would be appropriate for a waiver of waste discharge requirements. This MOU provides that WRCB will recommend the waiver to the affected coastal RWQCBs, so that during response, any incidental discharge resulting from the cleanup will not be subject to the NPDES permitting process because it does not result in a net addition of pollutants to federal waters.

At its July 21 meeting, the Board discussed the amendment of the memorandum of agreement (MOA) regarding the design of the Tijuana International Treatment Plant and San Diego/Tijuana Ocean Outfall to include construction of the ocean outfall. On October 2, 1990, WRCB entered into an MOA with the City of San Diego, EPA, and the International Boundary and Water Commission (IBWC) which identifies the roles of the various agencies for design of the International Treatment Plant and the San Diego/Tijuana Outfall. [14:1 CRLR 137-38] The purpose of the amendment is to identify the roles of the various agencies for construction of the ocean outfall; the primary goal of the MOA amendment is to address an agreement by

the City of San Diego to fund the City's share of the cost of constructing the outfall. WRCB's role in construction of the outfall was not an issue of this particular amendment but will be addressed in a future amendment.

Previously, EPA has requested technical assistance from the WRCB and has provided money to reimburse WRCB for staff costs. The October 2, 1990 MOA indicated that the WRCB would administer a special appropriation of \$5,365,000 provided by the legislature in AB 3544 in 1984. WRCB may be asked to provide a portion of this money as a match for federal costs for constructing the outfall; WRCB may also be asked to provide state bond monies to match federal Clean Water Grants (if any) to the City of San Diego.

At its August 6 workshop, the Board received information on the California Department of Transportation's (Caltrans) Storm Water Compliance Program. EPA regulations require owners and operators of state highways to obtain municipal permits in those urban areas subject to storm water permitting. In southern California, Caltrans falls within the permitting area of multiple RWQCBs; the Board is working with Caltrans to develop a consistent permitting program and may adopt a general "southern California" permit for Caltrans which would supersede the RWQCBs permits and regulate all Caltrans highway operations in southern California.

FUTURE MEETINGS

For information about upcoming workshops and meetings, contact Maureen Marché at (916) 657-0990.

